

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30th JUDICIAL CIRCUIT
INGHAM COUNTY

MICHAEL A. COX,
Attorney General of the State of Michigan,
on Behalf of the People of the State of Michigan,

Plaintiff,

v

Hon. *Laura Baird*
Case No. *07-589-CP*

The MANDATORY POSTER AGENCY, INC.,
doing business as:
MANDATORY POSTER AGENCY,
MICHIGAN FOOD SERVICE COMPLIANCE CENTER, and
MICHIGAN CENTER FOR DISEASE EDUCATION,
THE NATIONAL MANDATORY POSTER AGENCY,

AND

THOMAS FATA, Individually,
STEVEN FATA, Individually, and
JOSEPH FATA, Individually,
Jointly and Severally,

Defendants.

STIPULATED FINAL JUDGMENT and ORDER FOR PERMANENT INJUNCTION

Issued this 9 day of May 2007,
in the City of Lansing, Ingham County, Michigan.

PRESENT: Honorable *Laura Baird*
Ingham County Circuit Judge

The Parties, Plaintiff Michael A. Cox, Attorney General of the State of Michigan, on behalf
of the People of the State of Michigan, and Defendants The Mandatory Poster Agency, Inc.,
doing business as Mandatory Poster Agency, Michigan Food Service Compliance Center,

Michigan Center for Disease Education, and The National Mandatory Poster Agency, and Thomas Fata, Steven Fata, and Joseph Fata, each individually, have agreed to entry of this Final Judgment and Order for Permanent Injunction to resolve all matters of dispute between them with respect to the claims alleged in the Complaint filed by Plaintiff. In stipulating to the entry of this Final Judgment and Order for Permanent Injunction, the mutual objective of the parties is to resolve, with finality and without trial, adjudication, or appeal of any issue of fact or law, the claims alleged in the Complaint; Defendants having accepted service thereof through their counsel, David R. Brake; Knaggs, Harter, Brake & Schneider, P.C.

Stipulation to this final Judgment and Order for Permanent Injunction is neither an admission of liability nor an admission of any factual allegation of the Complaint.

NOW THEREFORE, the parties having requested the Court to enter this Final Judgment and Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

I. Jurisdiction

1. This Court has jurisdiction of the subject matter of this case and of the parties hereto.
2. Venue is proper as to all parties in the 30th Judicial Circuit Court, Ingham County, Michigan.

II. Parties Bound

3. Except as otherwise specifically provided, the provisions of the Final Judgment shall apply to and be binding upon The Mandatory Poster Agency, Inc., Steven Fata, individually, Thomas Fata, individually, and Joseph Fata, individually, whether acting with or through any agents, employees, representatives, successors, assigns, or other person, or through any other subsidiary, corporation, assumed name or other business name or entity, including

without limitation, Mandatory Poster Agency, Michigan Food Service Compliance Center, Michigan Center for Disease Education, The National Mandatory Poster Agency, Michigan Chemical Control Center, The Michigan Labor Law Poster Agency, The Labor Law Poster Service, and Poster Compliance Center.

4. Defendants consent to entry of this Final Judgment and waive any right of appeal.

III. Definitions

As used in this Final Judgment and Order for Permanent Injunction:

5. "Clear and Conspicuous" (including "clearly and conspicuously") means a statement that is readily understandable and presented in such font, size, color, contrast and location, compared to the other information with which it is presented, that it is readily apparent to and noticeable by the person to whom it is directed. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that other information, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner.

6. "CPD" means the Michigan Department of Attorney General, Consumer Protection Division.

7. "Defendants" means The Mandatory Poster Agency, Inc., Mandatory Poster Agency, Michigan Food Service Compliance Center, Michigan Center for Disease Education, The National Mandatory Poster Agency, Michigan Chemical Control Center, Steven Fata, individually, Thomas Fata, individually, and Joseph Fata, individually; whether acting with or through any principals, agents, employees, representatives, successors or assigns, subsidiary,

affiliate, corporation, or other business name or entity, including but not limited to The Michigan Labor Law Poster Service and Poster Compliance Center.

8. "Final Judgment" means this Stipulated Final Judgment and Order for Permanent Injunction.

9. "Representing" (including represent) means stating, orally or in writing, directly or indirectly, in substance or effect, and whether by affirmative statement, implication, or omission.

IV. Injunctive Provisions

10. In connection with the advertising, promotion, offering for sale, sale or distribution of any workplace poster or similar signage product, (except as otherwise set forth hereafter in paragraphs 11 B and 11 C) Defendants are permanently enjoined from:

A. Using a company name in any solicitation which includes words or terms that have a tendency to mislead recipients to believe the solicitation is from a government agency, a company contracting with a government agency or entity engaged in a non-commercial activity, including but not limited to use of the words "agency", "mandatory", "education" and "research" in a company name.

B. Using any solicitation materials, including envelopes or exterior mailings, that have the tendency or capacity to mislead persons to whom the solicitation is directed to believe that Defendants are a government agency, have a contract with a government agency to provide a product, or that the material is coming from a government agency, including but not limited to:

- 1) Use of words such as "government information" or "official business";
- 2) Use of symbols that include the outline of the United States, the outline of the State of Michigan, the seal of the State of Michigan or any

Michigan agency or department, or symbol similar to the seal of the State of Michigan or seal of a Michigan agency or department;

- 3) Use of the term "confidential", "important information", or any terms of similar import, when referring to Defendants' solicitations;
- 4) Use of the term "approved" or any terms of similar import, when referring to Defendants' products;
- 5) Representing that the solicitations were sent via express, registered mail, special delivery, or any other form of mail or delivery other than by the rate that actually applies, such as bulk rate or first class mail;
- 6) Representing on envelopes or exterior mailings that an enclosed solicitation requires immediate or other mandated response;
- 7) Use of notice numbers or business ID numbers, unless there is a specific business purpose for Defendants to use such a designation;
- 8) Use of names of state, local, or federal departments that are non-existent or do not represent actual entities, departments or divisions;
- 9) Referring to any possible civil or criminal penalties, or other governmental actions that may occur or be imposed for failure to comply with workplace poster requirements that are incomplete, inaccurate, or suggest that penalties will be imposed for failure to purchase Defendants' product; and
- 10) Representing, by use of company name and otherwise, that Defendants are engaged in a governmental or other non-commercial activity, including but not limited to research, education, or issuance of public service or like advisories. Notwithstanding the foregoing, this provision does not preclude Defendants from providing businesses with advice or recommendations, provided that the disclaimers required below are made in a clear and conspicuous manner as required by this Judgment.

C. Representing that Defendants are the sole source of notices or posters or that these products must be purchased from Defendants to comply with any law.

D. Representing that a failure to respond, or a delay in responding, to an advertisement or offer may result in negative consequences, legal or otherwise, including but not limited to use of numbered notices, (i.e. "2nd Notice", etc.).

E. Falsely representing any material fact in a solicitation for Defendants' products, including but not limited to:

- 1) The legal requirement(s) of workplace postings;
- 2) Possible civil or criminal penalties, or other governmental actions that may be imposed on businesses or individuals for failure to comply with workplace postings; and
- 3) Existence of new or recently imposed legal requirements attendant to workplace postings.

11. Defendants shall clearly and conspicuously disclose in all solicitations for the sale of workplace posters that:

- A. The [identify person or entity offering to sell the posters] is not a government agency or affiliated with a government agency and does not have any authorization from any state or governmental agency to supply posters to the public;
- B. As to mandatory workplace posters: similar posters may be available free of charge from other sources, including governmental agencies;
- C. As to non-mandatory workplace posters (posting not required by Michigan or Federal law): posters containing the same or similar information may be available free of charge from other sources; if true.

V. Customer Refunds

12. Defendants shall provide full reimbursement to any Michigan customer that requests a refund for hand washing posters purchased prior to the filing date of this Final Judgment, within seven days of the request. Defendants may require that the purchaser return the posters to Defendants, if Defendants first provide affirmative notice that the purchaser will also receive full reimbursement, including mailing costs associated with returning the posters.

- A. Defendants represent and warrant that prior to the filing date of this Final Judgment:

(1) All refund requests by Michigan purchasers of hand washing posters have been honored, following written notice provided by Defendants to all such purchasers advising that solicitations for hand washing posters contained misrepresentations and offering full refunds.

(2) A complete and accurate list of customer refunds, including customer name, address and amount of refunds made pursuant to subparagraph 12.A.(1) has been provided to CPD.

13. If, upon motion by Plaintiff, this Court finds that one or more Defendants made any misrepresentation in regards to the matters set forth in subparagraph 12.A. above, such finding will constitute a violation of the terms of this Final Judgment.

VI. Payment to the State

14. Defendants shall pay to the State of Michigan enforcement costs of \$7,500.00. Payment shall be made at the time of Defendants' execution of this Final Judgment.

15. Payment shall be made by check payable to the "State of Michigan" and remitted to Division Chief Katharyn Barron, Consumer Protection Division, P.O. Box 30213, Lansing, MI 48909. The check shall reference *Mandatory Poster Stipulated Judgment*.

16. Defendants are subject to payment of an additional sum of \$10,000.00 as a civil penalty. Payment of this sum shall be suspended for so long as Defendants are in full compliance with the terms of this Final Judgment. The civil penalty provided herein shall be in addition to any other and further amount or penalty that the court may impose in the event of Defendants' noncompliance with this Final Judgment.

VII. General Provisions

17. Defendants are responsible for providing notice to and informing all parties bound by this Final Judgment of the injunctive provisions herein, and shall be responsible for ensuring their compliance therewith.

18. Participation by any Defendant in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited by this Final Judgment or for any other purpose that would circumvent any part of the Final Judgment shall be deemed as non-compliance with this Judgment.

19. Nothing in this Final Judgment shall be deemed or construed as a grant or permission to any Defendant to conduct any activities in violation of any federal, state, or other applicable law or regulation.

20. This Final Judgment does not constitute an approval by the Attorney General of any of Defendants' business practices and Defendants shall make no representation to the contrary.

21. Nothing in this Final Judgment shall be construed to limit or affect the rights of any consumer or other person or entity to take any action, assert any claim or otherwise pursue any available right or remedy, nor create any private rights or causes of action in any third parties.

22. Nothing in Final Judgment shall limit the enforcement authority of any other state, county, or other governmental department or agency regarding any Defendant herein.

23. Plaintiff shall not institute any further proceedings or take any further action against Defendants under Michigan law for the activities stated in Plaintiff's Complaint, prior to the date of entry of this Final Judgment, as long as Defendants are in compliance with the terms of the Final Judgment.

24. Notwithstanding the forgoing paragraph 23, the Attorney General may institute an action or proceeding to enforce the terms and provisions of the Final Judgment or take action based on future conduct by the Defendants.

25. Nothing herein precludes the Attorney General from pursuing any action with respect to acts or practices of Defendants not specifically alleged in the Complaint or any acts or practices conducted after the filing date of the Final Judgment.

26. Each undersigned individual represents and warrants that he or she is fully authorized by the party they represent to enter into this Final Judgment and to legally bind such party to the terms of this Order.

27. Any failure by any party to the Final Judgment to insist on strict performance of any term of this Final Judgment shall not be deemed a waiver of any of the provisions of this Final Judgment. Such party, notwithstanding such failure, shall have the right to insist upon the specific performance of any and all of the provisions of this Final Judgment.

28. Jurisdiction is retained for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for modification of the injunctive provisions hereof, for the enforcement and compliance herewith, and for the punishment of violations hereof.

29. This Final Judgment, including the permanent injunction terms contained herein, shall take effect immediately upon the entry thereof.

Dated: MAY 09 2007

Honorable JUDGE LAURA BAIRD

Ingham County Circuit Judge

Respectfully submitted:

Dated: 5-2-07

Dated: 5-2-07

Dated: 5-2-07

Dated: 5-2-07

Dated: 5-3-07

THE MANDATORY POSTER AGENCY, INC.,

By: Thomas Fata

Its: President

Thomas Fata

Thomas Fata, Individually

Steven Fata

Steven Fata, Individually

Joseph Fata

Joseph Fata, Individually

David R. Brake

David R. Brake (P38633)

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Dated: 5-7-07

By: Kathy Fitzgerald

Kathy Fitzgerald (P31454)

Dated: 5-7-07

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